



**Billing Code 4310-55-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 22**

**[Docket No. FWS-R9-MB-2011-0094]**

**[91200-1231-9BPP]**

**RIN 1018-AY30**

**Eagle Permits; Revisions to Regulations Governing Take Necessary To Protect  
Interests in Particular Localities**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** We solicit public comment on possible revisions to regulations under the Bald and Golden Eagle Protection Act for permits to take eagles where the take is associated with, but not the purpose of, otherwise lawful activities. During the 2 years that the regulations have been in effect, some stakeholders have expressed concerns with some provisions of the rule. We are giving interested members of the public the opportunity to review the regulations and recommend revisions that would create a more efficient permit process while continuing to adequately protect eagles.

**DATES:** We will accept comments received or postmarked by the end of the day on

**[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

**ADDRESSES:** You may submit comments by either one of the following methods:

• *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS–R9–MB–2011–0094.

• *U.S. mail or hand delivery*: Public Comments Processing, Attention: FWS–R9–MB–2011–0094; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, MS 2042–PDM; Arlington, VA 22203–1610.

We will not accept e-mail or faxes. We will not consider comments submitted after the due date. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information that you provide. See the Public Comments section below for more information.

**FOR FURTHER INFORMATION CONTACT:** Chief, Division of Migratory Bird Management, at 703-358-1714.

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Comments**

We request comments and suggestions and encourage the submission of new ideas, materials, recommendations, and arguments from the public; ornithological organizations; environmental organizations; corporations; local, State, tribal, and Federal agencies; and any other interested party. Please ensure that the comments pertain only to the issues presented in this advance notice of proposed rulemaking.

You may submit your comments and supporting materials only by one of the methods listed in **ADDRESSES**. We will not consider comments sent by e-mail or fax, or written comments sent to an address other than the one listed in **ADDRESSES**.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the Web site. If you

submit a hardcopy comment that includes personal identifying information, you may request that we withhold this information from public review, but we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>.

Comments and materials we receive will be available for public inspection at <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

## **Background**

The Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d) (Eagle Act) prohibits take of bald eagles and golden eagles except pursuant to Federal regulations. The Eagle Act regulations at title 50, part 22, of the Code of Federal Regulations (CFR), define the “take” of an eagle to include the following broad range of actions: “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb” (50 CFR 22.3). The Eagle Act allows the Secretary of the Interior to authorize certain otherwise prohibited activities through regulations. The Secretary is authorized to prescribe regulations permitting the “taking, possession, and transportation of [bald eagles or golden eagles] . . . for the scientific or exhibition purposes of public museums, scientific societies, and zoological parks, or for the religious purposes of Indian tribes, or . . . for the protection of wildlife or of agricultural or other interests in any particular locality,” provided such permits are “compatible with the preservation of the bald eagle or the golden eagle” (16 U.S.C. 668a).

On September 11, 2009, we published a final rule that established new permit regulations under the Bald and Golden Eagle Protection Act for nonpurposeful take of

eagles (74 FR 46836). Those regulations at 50 CFR 22.26 provide for permits to take bald eagles and golden eagles where the taking is associated with, but not the purpose of, an activity. The regulations provide for both standard permits and programmatic permits. Standard permits authorize individual instances of take that cannot practicably be avoided. Programmatic permits authorize recurring take that is unavoidable even after implementation of advanced conservation practices.

“Programmatic take” is defined at 50 CFR 22.3 as “take that is recurring, is not caused solely by indirect effects, and that occurs over the long term or in a location or locations that cannot be specifically identified.” This definition distinguishes programmatic take from any other take that has indirect effects that continue to cause take after the initial action. We can issue programmatic permits for disturbance, as well as take resulting in mortalities, based on implementation of “advanced conservation practices” developed in coordination with the Service. “Advanced conservation practices” (ACPs) are defined at 50 CFR 22.3 as “scientifically supportable measures that are approved by the Service and represent the best available techniques to reduce eagle disturbance and ongoing mortalities to a level where remaining take is unavoidable.” Most take authorized under § 22.26 has been in the form of disturbance; however, permits may authorize lethal take that is incidental to an otherwise lawful activity, such as mortalities caused by collisions with rotating wind turbines. Since publication of the 2009 final rule, the Service has issued approximately 50 permits under the new regulations. However, we have not yet issued any programmatic permits.

In a separate action, [Docket No. FWS–R9–MB–2011–0054] we are proposing revisions to the regulations to extend the maximum term for programmatic permits up to

30 years, incorporating additional adaptive conservation measures if necessary to ensure the preservation of eagles. As part of that action, we are also proposing to modify the application fee structure for programmatic permits. Because those proposed regulations are a separate action from this notice, we are not soliciting, and will not consider, any comments submitted in response to this notice that are related to the issues addressed in the proposed regulations (the maximum term of programmatic permits and the programmatic permit application fee structure). Through this notice, we solicit public input on any other aspects of the permit program governed by 50 CFR 22.26 that may be improved by revision of the regulations. We are particularly interested in public input on the following three issues:

*(1) Clarifying the criteria for issuance of programmatic and standard permits.*

Under the criteria, “take that cannot practicably be avoided” can be authorized with a standard permit; however, a programmatic permit requires that the take be “unavoidable.” The preamble accompanying the 2009 rule states, however, that “applicants for both types of permits must take all practicable steps to avoid and minimize take” (74 FR 46838). Should the regulations be revised so that the issuance criterion for programmatic permits is the same as for standard permits: That the project proponent has reduced take to the maximum degree practicable?

*(2) Compensatory mitigation.* Under what circumstances should permittees be required to provide compensatory mitigation? To what degree should any required mitigation offset the detrimental impacts to eagles? We also welcome input regarding what types of specific compensatory mitigation measures may be appropriate.

*(3) Eagle Act preservation standard.* The Eagle Act requires the Service to determine that any take of eagles it authorizes is “compatible with the preservation of bald eagles or golden eagles.” In the preamble to the final regulations for eagle nonpurposeful take permits, and in the Final Environmental Assessment of the regulations, we defined that standard to mean “consistent with the goal of stable or increasing breeding populations.” We seek public input as to whether this standard is appropriate or whether it should be further refined or otherwise modified.

**Authority:** The authorities for this notice are the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703–712), and the Bald and Golden Eagle Protection Act (16 U.S.C. 668a).

Dated: December 20, 2011

Rachel Jacobson

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

<EDNOTE><HED>Editorial Note: <P>This document was received in the Office of the Federal Register on March 30, 2012.</EDNOTE>

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